RECENT DECISIONS

AGENCY—NEGLIGENCE—RESPONSIBILITY FOR APPARENT AUTHORITY.—The defendant owned and operated a hotel where the plaintiff applied and was assigned to a room by a person apparently in charge of the office. The plaintiff deposited his valuables with him and obtained a receipt, acting pursuant to the usual statutory notices there posted. The person absconded with the plaintiff's property. It appeared that he was not in the employ of the defendant, but had been a roomer in the hotel. The plaintiff sues to recover the value of the things deposited. *Held,* for the plaintiff, on the ground that the defendant, because of negligence, was estopped to deny that the imposter had received the deposit as her agent. *Kanelles* v. *Locke* (Ohio Ct. of App. 1919) 18 Ohio Law Rep. No. 33, 31 O. C. A. 280.

Courts are prone to invoke the doctrine of estoppel to explain agency cases involving so-called apparent authority. See *Hannon* v. *Siegel-Cooper Co.* (1901) 167 N. Y. 244, 60 N. E. 597; *Plankinton Packing Co.* v. *Berry* (1917) 199 Mich. 212, 165 N. W. 676. But accurate analysis reveals the exercise of a real, represented agency, resulting in a true contractual duty on the part of the one who is held bound as principal. See (1905) 5 COLUMBIA LAW REV. 36; (1906) 6 COLUMBIA LAW REV. 34; *contra,* (1905) 5 COLUMBIA LAW REV. 354. In the instant case, the facts constituting the representation of agency may be grouped into (1) the conduct of the impostor, (2) the stage-setting. Should the defendant, factually responsible for the latter, and thus contributing to the aggregate of facts which misled the plaintiff, be legally responsible for the effect of this composite representation? If the hotel office had been occupied by the impostor without fault of the proprietor,—had a real clerk been forcibly put out of the way, and the fraud then practised upon the guest,—it seems that no legal responsibility for the representation of agency would have attached to the proprietor. But if the defendant had designedly left the stage set for an impostor, he would probably be bound as principal. In the instant case, as has been seen, the defendant contributed certain of the facts which formed the representation of agency. Her negligence made possible and facilitated the addition, by the impostor, of other facts to the composite representation. For the effect of this aggregate the defendant should be legally responsible.

ATTORNEY AND CLIENT—ATTORNEY'S LIEN—SETTLEMENT AFTER JUDGMENT.—The interveners, attorneys for the plaintiff, contracted with him for a contingent fee of fifty per cent. "on any amount of money received in settlement or recovered by judgment". A judgment of $2500 was recovered, and the defendant appealed. Pending appeal, the plaintiff, who was financially irresponsible, settled with the defendant for $500, in the absence of his attorneys and without their consent. The attorneys claim one half of the judgment as their fee, rather than one half of the settlement. *Held,* for the plaintiff; two judges dissenting. *Griggs* v. *Chi., etc. Ry., Lambert et al., Interveners* (Neb. 1920) 177 N. W. 185.

To encourage settlements the common law permitted parties to compromise at any time without consent of their attorneys. See *Fischer-Hansen* v. *B'klyn H'gts Ry.* (1903) 173 N. Y. 492, 66 N. E. 395. But at the same time the common law gave an attorney a charging lien upon a judgment recovered through his efforts. (1920) 20 COLUMBIA LAW REV. 704. If this lien were absolute,

the right of parties to make a *bona fide* compromise after judgment would be seriously impaired. Of course, actual fraud upon the attorney entitles him to have the settlement set aside to the extent of his lien. *Desamen* v. *Butler Bros.* (1912) 118 Minn. 198, 136 N. W. 747; see *Jones* v. *Duff Grain Co.* (1903) 69 Neb. 91, 94, 95 N. W. 1. If, pending appeal, when the final outcome is still uncertain, a *bona fide* settlement is made, then the lien attaches to the settlement, and the amount thereof determines the attorney's fee. *Nichols* v. *Orr* (1917) 63 Colo. 333, 166 Pac. 561; *Boyle* v. *Metro. St. Ry.* (1908) 134 Mo.. App. 71, 114 S. W. 558; *Rickel et al.* v. *Chi., etc. R. R.* (1900) 112 Iowa 148, 83 N. W. 957. *Contra, Baxter* v. *Connor* (1907) 119 App. Div. 450, 104 N. Y. Supp. 327; *Hammond, etc. R. R.* v. *Kaput* (1915) 61 Ind. App. 543, 110 N. E. 109. That the settlement in the instant case was made without the consent of the attorneys does not, following the better view, constitute "constructive fraud" upon them. *Nichols* v. *Orr, supra.* The fraud must be collusive, and aimed at them directly. *Stephens* v. *Metro. St. Ry.* (1911) 157 Mo. App. 656, 138 S. W. 904. Inasmuch as in the instant case the interveners were forewarned of the impending settlement, and there was no actual fraud practised upon them, the dissenting opinion is to be preferred.

ATTORNEY AND CLIENT—DISCHARGE OF ATTORNEY—MEASURE OF DAMAGES.—The defendant retained the plaintiff as attorney and legal adviser for a period of one year at a compensation of $5200, payable $100 weekly. The plaintiff acted and was paid under the contract for some five months when he was discharged without cause. The plaintiff sues for the balance due at $100 per week from the time of discharge until the expiration of the contract term of retainer. On appeal from an unanimous decision of the Appellate Division affirming a dismissal of the complaint, *held,* the judgment will be reversed on the ground that since the employment was under a general retainer for a fixed period, the defendant broke the contract by discharging the plaintiff without cause. *Greenberg* v. *Remick & Co.* (N. Y. Ct. of App. 1920) 64 N. Y. L. J. 765.

As predicted in (1920) 20 COLUMBIA LAW REV. 792, the instant case limits the minority doctrine that, in contracts between attorney and client, there is an implied condition that the attorney may be dismissed at any time without cause. The result reached also accords with the view there declared to be sound that the measure of damages should be the entire contract price and not on the basis of a *quantum meruit.* The very fact that the minority doctrine is thus limited indicates that even the few courts which follow it feel uncomfortable in implying such a condition.

BILLS AND NOTES—SURETYSHIP—RELEASE OF SECURITY—DISCHARGE.—The defendants A and B jointly executed a note to the plaintiff. A, the appellant, signed as an accommodation maker. The plaintiff had notice. Later B, the principal, conveyed land to the plaintiff as security for the note, and subsequently, desiring to sell the property, he induced the plaintiff to convey the land to one R upon the latter's executing a mortgage and note. The plaintiff discovered an error in the note and returned it to the defendant B for correction. The note disappeared, and the plaintiff sued A as joint maker. A pleaded that he was a surety and that the plaintiff's release of the collateral discharged him *pro tanto.* The trial court ruled out all allegations with respect to suretyship and the plaintiff had a verdict. *Held,* one judge dissenting, the judgment must be reversed. *State Bank of Slayton* v. *Edwards et al.* (N. Dak. 1920) 177 N. W. 677.